

Editor's Note: appeal filed, Civ. No. 97-0265-S-LMB (D. Id. June 13, 1997),
reversed and set aside (to the extent affirms deferment of commencement of
grazing use), by stipulation (April 7, 1998)

RIDDLE RANCHES, INC.
v.
BUREAU OF LAND MANAGEMENT

IBLA 94-17

Decided February 3, 1997

Appeal from a decision of Administrative Law Judge John R. Rampton, Jr., affirming so much of a Bureau of Land Management grazing decision as established an initial livestock use level and delayed the season of livestock use for the Riddle allotment. ID-01-91-03.

Affirmed.

1. Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals--Grazing Permits and Licenses: Hearings--Rules of Practice: Appeals: Burden of Proof

A grazing decision establishing initial use levels by livestock for a grazing allotment based upon actual prior use of the allotment (rather than on permitted use) is affirmed on appeal because it conforms to a BLM management framework plan. A finding that the season of use for the allotment must be modified to promote management objectives established by the same plan is also affirmed upon a showing that the change is reasonable, based upon expert analysis of observed vegetation, soil, and climatic conditions on the allotment.

APPEARANCES: William F. Schroeder, Esq., Vale, Oregon, and W. Alan Schroeder, Esq., Boise, Idaho, for appellant Riddle Ranches, Inc.; Robert S. Burr, Esq., and Kenneth M. Sebby, Esq., U.S. Department of the Interior, Office of Field Solicitor, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Riddle Ranches, Inc. (Riddle Ranches), has appealed from a September 8, 1993, decision of Administrative Law Judge John R. Rampton, Jr., as modified by his order dated October 4, 1993, affirming so much of a 1990 grazing decision by the Bruneau Area Manager, Boise, Idaho, District Office, Bureau of Land Management (BLM), as delayed the season of authorized livestock use on the Riddle allotment and found the initial stocking rate of active livestock use of the allotment was properly set by BLM at 23,088 animal unit months (AUM's). So much of the BLM decision as would have later reduced the active grazing preference below 23,088 AUM's was set aside; BLM did not appeal from this

finding, to which much of the evidence at an evidentiary hearing into the matter was addressed, and that aspect of Judge Rampton's decision is therefore not before us for review and will not be considered herein, except to the extent his analysis of that issue affects consideration of the issues under review before us.

In September 1990, BLM proposed changes in the boundaries and administration of the Riddle allotment so as to delay entry for authorized grazing from March 16 to April 16 for the years 1991 and 1992 and to May 1 thereafter, and to reduce Riddle Ranches' active preference from 27,199 AUM's to 23,088 AUM's for 1991 and 1992, to 18,977 AUM's for the years 1993 and 1994, and to 14,685 AUM's thereafter. Riddle Ranches did not protest the proposal but, after the proposed decision had become final, appealed BLM's decision adopting those changes. Riddle Ranches argued that BLM's determination of the grazing capacity of the allotment was inaccurate because it made use of improper methods of estimation and did not conform to the Bruneau-Kuna Management Framework Plan (BMFP) (the land use plan for the Bruneau Resource Area, including the Riddle allotment), and that the change in the season of use was not supported by the record. A 9-day hearing conducted over the course of 6 months at Boise, Idaho, produced extensive expert testimony concerning range conditions at the Riddle allotment and resulted in the decision by Judge Rampton, as amended, affirming the BLM decision insofar as it delayed commencement of the season of livestock use and set an active livestock use level for the allotment at 23,088 AUM's.

Relevant to those two issues, Judge Rampton found, concerning the active livestock level for the Riddle allotment, that it was properly set at 23,088 AUM's because that number "is properly based upon and consistent with the BMFP * * * adjusted for the unavailability of certain lands and the resource needs of wildlife as identified in the BMFP." See Order Clarifying and Amending Decision dated Oct. 4, 1993, at 2. He also found, concerning the proper season of use for the allotment, that testimony by BLM experts concerning studies conducted on the allotment had established a rational basis for finding that it was proper to delay entry of cattle onto the range in the spring season from March until until May 1. See Decision at 10-12, 13. Riddle Ranches filed a timely appeal.

On appeal, Riddle Ranches contends that these two findings should be set aside; it is argued that Judge Rampton applied an erroneous standard of proof and exceeded his authority in deciding the two issues now before us for review (Statement of Reasons (SOR) at 18, 83, 86,). It is also contended that he improperly relied upon facts outside the record in making both rulings, rendering his decision unreasonable (SOR at 20), and that both rulings were contrary to the BMPF (SOR at 28, 29, 30, 33). Riddle Ranches also argues that the Judge's decision is contrary to Departmental regulations (SOR at 58, 69; Reply at 3), and that the change in season of use is contrary to provisions of the grazing permit or license (SOR at 77, 82, 83; Reply at 4). We reject these arguments and adopt Judge Rampton's September 1993 decision, as amended by his October 1993 order, as our decision on the issues under appeal; it is attached to this opinion as Appendix A.

Section 2 of the Taylor Grazing Act of June 24, 1934, as amended, 43 U.S.C. §§ 315a (1994), authorizes the Secretary, with respect to grazing districts on public lands, to "make such rules and regulations" and to "do any and all things necessary * * * to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range." Title IV of the Federal Land Policy and Management Act of 1976, amending the Taylor Grazing Act, 90 Stat. 2772-75, reiterates the Federal commitment to protection and improvement of Federal rangelands. See 43 U.S.C. §§ 1751-1753 (1994); see also Public Rangelands Improvement Act of 1978, 92 Stat. 1803-08, 43 U.S.C. §§ 1901-1908 (1994).

BLM, as the Secretary's delegate, enjoys broad discretion in determining how to manage and adjudicate grazing preferences. Yardley v. BLM, 123 IBLA 80, 90 (1992). Under 43 CFR 4.478(b), BLM's adjudication of a grazing preference may not properly be set aside on appeal "if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR Part 4100." The Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge (and by this Board) by taking the position that when BLM adjudicates grazing privileges in the exercise of its administrative discretion, that action may be reversed as arbitrary, capricious, or inequitable action only if it is not supportable on any rational basis. See Kelly v. BLM, 131 IBLA 146, 151 (1994), and cases therein cited. Although unusual, this scope of review is consistent with the discretionary nature of the Secretary's responsibility for Federal range land. Claridge v. BLM, 71 IBLA 46, 50 (1983).

The standard of proof to be applied in weighing evidence presented at a hearing held pursuant to an appeal of a grazing decision issued by BLM is the preponderance of evidence test. Kelly v. BLM, supra. An Administrative Law Judge's decision adjudicating grazing privileges will not be set aside on appeal if it correctly determines that a BLM decision reducing grazing is reasonable and substantially complies with the grazing regulations. Glanville Farms v. BLM, 122 IBLA 77 (1992). Consequently, if a decision determining grazing privileges has been reached in the proper exercise of administrative discretion, one seeking relief therefrom bears the burden of showing by a preponderance of the evidence of record that the decision is unreasonable or improper. While Judge Rampton used the words "a clear showing of error" in his decision on page 5, an examination of his reasoning shows that he actually applied the preponderance test. We find that Judge Rampton applied the correct standard in this case when he assigned that burden to Riddle Ranches.

The first question presented by this appeal is whether Judge Rampton properly found the level of initial active livestock use for the Riddle allotment to be 23,088 AUM's. This figure was derived from actual use reports supplied by Riddle Ranches for the years 1976-1980. The 23,088 AUM's figure is the product of adjusting the 1976-1980 use level, which was 23,475 AUM's, by reducing it by 72 AUM's for unavailable forage, by

162 AUM's for loss of public lands from the allotment resulting from Federal/State land exchanges, and by 232 AUM's to account for the use of the allotment by wildlife, and by then adding 80 AUM's to account for the use of the allotment by Indian horses in trespass. See BLM Decision at 2-4; Judge Rampton's Order Clarifying and Amending Decision at 2.

[1] Riddle Ranches argues that the proper initial stocking level should be set at 27,199 AUM's, the amount for which it was licensed. This argument, however, ignores the BMFP, which requires that livestock use levels be established by reference to 5-year (1976-1980) licensed active use levels (Decision at 3; Exh. A-3 at 00747). As Judge Rampton found, the BMFP requires that "the initial stocking rate to begin the five year implementation period must be based on prior livestock use levels." *Id.* It is unquestioned that the actual use levels were as found by Judge Rampton (and as reported by Riddle Ranches). The record of historic use of the allotment establishes that actual use by Riddle Ranches during the target years was indeed less than the amount for which it was licensed and was instead the figure used by Judge Rampton in reaching his decision. Since the BMFP required BLM to consider historic livestock use in deciding this matter, and the BMFP admittedly controls the issue, we can find no error or unreasonableness in Judge Rampton's ruling.

Concerning delay of the season of spring livestock use of the allotment until May, Judge Rampton rejected a series of contentions made by experts testifying for Riddle Ranches and concluded that Riddle Ranches had not established that BLM's reasons for the change in seasonal use were improper or unreasonable. Summarizing his position on this issue, he found that "the testimony of Riddle Ranches' experts in disagreement with the testimony of BLM's experts does not amount to a showing that the Final Decision was arbitrary, capricious, or clearly erroneous" (Decision at 16). This finding is supported by the record produced at hearing.

When Riddle Ranches chose not to comment on this issue prior to decision, BLM was obliged to issue a decision based on studies and expert evaluations that were available to the agency without participation by the grazer. Those studies, produced and explained by BLM experts at hearing, were to the effect that if the range is to be sustained and improved in conformity to the BMFP, the elevation and character of the soils on the high desert range that comprises the Riddle allotment do not permit release of cattle while the soil is wet and before the grass cover has begun to grow. The BLM experts concluded that this means, generally, that livestock should not be released onto the allotment until May, a time of entry that corresponds to seasonal use practiced on other, similar allotments in the general area. See Tr. at 569, 673-76, 795-800, 811, 816-18, 1,065-66, 1,315-16, 1,444-46.

While the experts testifying for Riddle Ranches disputed the BLM testimony on this point, they did not offer soil and climate studies of their own on the season-of-use issue, but simply disagreed with the studies and analysis presented by BLM's experts. See Tr. 502-03, 1,221, 1,232. On the record before us, we therefore adopt Judge Rampton's finding that the professional disagreement voiced by the Riddle Ranches experts failed

to show error in the studies conducted by BLM's range conservationists. See, e.g., Animal Protection Institute of America, 122 IBLA 290, 295 (1992) (holding that BLM was entitled to rely on the advice of agency range conservationists in determining grazing issues).

Aside from the question of the relative merit of the expert testimony produced by BLM and Riddle Ranches, Judge Rampton concluded that the question of season-of-use could not be divorced from constraints imposed by the BMFP. Observing that, while the opposing experts tended to interpret evidence concerning range condition on the Riddle allotment differently, that data presented by both sides indicated that the condition of the forage growing on the allotment was generally static. This finding led to the conclusion that season of use of the allotment should be delayed to facilitate range improvement because "the generally static trend is unacceptable under the BMFP" and, as a consequence, "the land use objective to improve the range in poor and fair condition is not being met" (Decision at 14). This approach to decisionmaking in such cases is proper; imposition by BLM of limitations upon seasons of use is an appropriate method for achieving management objectives under the Grazing Act in cases where the record establishes a rational basis for the action taken. See Hugh A. Tipton, 55 IBLA 68, 71 (1981), and cases cited. The record establishes that this was such a case, inasmuch as, in the opinion of BLM's range conservationists, early spring use of the allotment was a principal cause of the failure of forage conditions there to improve.

Riddle Ranches challenges the failure to prepare an allotment management plan, arguing that, under the BMFP, preparation of such a plan was required before any changes in season of use could be made, and that the BLM decision therefore failed to conform to existing land use plans as required by 43 CFR 4100.0-8. We adopt Judge Rampton's finding that, while the BMFP contemplated ultimate development of an allotment management plan, it did not preclude all management activity before one was prepared. See Appendix A. Similarly without merit is a contention that 43 CFR 4130.6-3, requiring consultation between grazing lessees and BLM, was ignored by BLM in this case so as to bar a change in the season of use; the record shows there was such consultation between BLM employees and agents of Riddle Ranches (see, e.g., Tr. at 80-85, 517-18, 650-51); the fact that the matter ended in dispute and resulted in a hearing does not establish that there was an absence of consultation prior to those happenings.

Nor is there any indication that Judge Rampton relied upon facts outside the record or exceeded his authority in order to reach his decision, as alleged by Riddle Ranches. The record before us, consisting of over 1,500 pages of transcribed testimony and related exhibits, supports his finding setting an initial stocking level for the allotment at 23,088 AUM's, based upon actual use pursuant to the BMFP. Further, his decision to affirm BLM's change of the season of use because of observed rangeland conditions found on the Riddle allotment in order to conform to management objectives for the allotment is supported by the record of hearing; these findings affirm, in part, the September 1990 BLM decision from which the appeal was taken and cannot reasonably be construed as a departure by the Administrative Law Judge from the scope of review

accorded him by the Secretary of the Interior. See Kelly v. BLM, supra. We therefore conclude that Riddle Ranches has failed to carry the burden of showing that the decision issued by Judge Rampton was in error on either issue presented by this appeal, and we adopt it as our own. See Appendix A.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is adopted as the Board's opinion, on the issues presented for our review.

Franklin D. Arness
Administrative Judge

I concur:

James L. Burski
Administrative Judge

RIDDLE RANCHES, INC.,	:	ID-01-91-03
Appellant	:	
	:	Appeal from the Area Manager's
	:	Notice of Proposed Decision
	:	dated September 20, 1990,
	:	Bruneau Area Manager, Boise
	:	District, Idaho
v.	:	
	:	
BUREAU OF LAND MANAGEMENT,	:	
Respondent	:	

DECISION

Appearances: William Schroeder, Esq., Vale, Oregon, and Alan Schroeder, Esq., Boise, Idaho, for appellant;

Robert S. Burr, Esq., and Kenneth M. Sebby, Esq., Office of the Field Solicitor, Boise, Idaho, for respondent.

Before: District Chief Administrative Law Judge Rampton

In a September 20, 1990 Proposed Decision, the Bureau of Land Management (BLM), U.S. Department of the Interior, proposed to (1) change the boundary of the Riddle allotment, located in the Bruneau Resource Area of the Boise District, to remove pasture 16 from the allotment, (2) change the date upon which Riddle Ranches, Inc. (Riddle Ranches) is authorized to begin grazing on the Riddle allotment from March 16 to April 16, beginning in the 1991 grazing year, and from April 16 to May 1, beginning in the 1993 grazing year, and (3) reduce Riddle Ranches' active preference from 27,199 animal unit months (AUM's) to 23,088 AUM's, beginning in the 1991 grazing year, from 23,088 AUM's to 18,977 AUM's, beginning in the 1993 grazing year, and from 18,977 AUM's to 14,865 AUM's, beginning in the 1995 grazing year. Because no protest of this proposed decision was filed, the decision became a final decision of BLM. Riddle Ranches has appealed this

Final Decision contending that (1) the grazing capacity of the allotment established in the final decision is not accurate and was determined using improper methods of estimation, and (2) that the change in the season of use is inappropriate and not supported by the evidence (Riddle Ranches Statement of Reasons).

A hearing in the matter was held on April 21, 22, 23, and 24, July 7 and 8, and September 1 and 2, 1992, in Boise, Idaho. Post-hearing briefs were then submitted by both parties. In its briefs and at the hearing, Riddle Ranches further contended that the Final Decision did not conform to the governing land use plan.

Statement of the Facts

The Riddle allotment is divided into 18 pastures largely enclosed by either fence or rimrock (Tr. 36-38; Ex. R-1). Pastures 4, 5, 6, 7, 8, 10, 15, and 18 are used in the spring; pastures 2, 3, 4, and 9 are used in the summer and fall; pastures 12, 13, 14, and 17 are used in the spring, summer and/or fall, and pasture 11 is used in the winter (Ex. A-7, pp. 4-6).

The grazing preference for the public lands within the Riddle allotment is 27,199 AUM's, which preference is held exclusively by Riddle Ranches (Ex. A-7, p. 3; Tr. 20-21). Pete Jackson is the President of Riddle Ranches and, along with his wife and son, manages Riddle Ranches' livestock operation (Tr 514, 1469, 1471).

From 1979 through 1981, an "one-point-in-time" soil and vegetation inventory (1979-81 Inventory) was conducted on the Bruneau Resource Area including the Riddle allotment, for the purpose, among other things, of determining the grazing capacity of the public range therein (Tr. 27-28, 201-202). Data for the 1979-81 Inventory was collected using the site inventory method (SIM), which is the same as the ecological site inventory method. This method requires collection of the same type of information as that collected using the soil vegetation inventory method (SVIM), but requires the data to be collected and handled differently than it is collected and handled when employing SVIM (Tr. 126-131, 1560-1568). The active use of 14,865 AUM's established by the Final Decision is based upon the grazing capacity of the Riddle allotment as determined by the 1979-81 Inventory and then modified to account for a Federal/State land exchange involving land within the allotment and the inaccessibility of pasture 16 (Tr. 133-134, 202; Final Decision, pp. 1-2).

In September 1982, the Bruneau-Kuna Grazing Environmental Impact Statement Final (FEIS) was completed addressing grazing management in the Bruneau Resource Area (Ex. A-3, pp. 00826-00931). Shortly thereafter, in March 1983, the Bruneau-Kuna Management Framework Plan (BMFP), the land use plan for the Bruneau Resource Area, including the Riddle allotment, was completed (Ex. A-3, pp. 00726-00825). The BMFP contains multiple use recommendation RM-3.1 which recommends adjusting livestock use

levels over a 5-year period to the carrying capacity of the range established by the 1979-81 Inventory (Exhibit A-3, p. 00747). This recommendation was rejected in favor of the following determination:

Initial livestock use levels by allotment will be established at the five-year licensed active use levels from the years 1976-80 or by mutual agreement. Any subsequent increase or reduction in AUM's through the five-year implementation schedule will be based on monitoring, and other resource needs as identified in this MFP and any other reasonable requirement as deemed necessary.

(Exhibit A-3, p. 00747) (emphasis added). The reason for rejection of the recommendation was:

Since the time multiple use recommendation RM-3.1 was made, a BLM directive (I.M. No. ID-82-297 and W.O. I.M. 83-340) has been implemented which states that SVIM type inventory data will no longer be used in allocating forage. Therefore the initial stocking rate to begin the five year implementation period must be based on prior livestock use levels (i.e. licensed use) since actual use data is not available. * * * The final livestock stocking rate recommended in year 5 is derived from SVIM inventory data. This livestock use level may or may not be reached depending on the results of the monitoring studies.

(Ex. A-3, p. 00749) (emphasis added). Similarly, the Rangeland Program Summary (RPS) completed in June 1983, which highlights the major BMFP decisions, states:

Since the Final EIS was completed. BLM policy regarding forage allocation has been modified. The new policy states that forage allocations based on the Bureau's Soil Vegetation Inventory Method (SVIM) or a similar onetime production inventory cannot be made. Since the proposed forage allocation figures presented in the EIS were the result of a one-time survey and used elements of SVIM, they will not be used to establish a forage allocation.

(Ex. A-3, p. 00715) (emphasis added). Also, Jerry Taylor, the BLM Supervisory Range Conservationist for the Bruneau Resource Area who assisted in the drafting of the Final Decision, acknowledged that SVIM was an unreliable process for estimating carrying capacity (Tr. 1571-1572).

Nevertheless, BLM relied upon the SVIM type inventory data (SIM data) generated by the one-point-in-time 1979-81 Inventory to set the carrying capacity (active use) for the Riddle allotment because it determined that a reduction of the active use was warranted based upon trend data which it collected in 1983, 1987, and 1990 (Tr. 133-135, 166, 782). An

allotment evaluation prepared by BLM prior to issuing the Final Decision sets forth this determination (Ex. A-7).

The average licensed active use for the 1976-1980 period on the Riddle allotment was 23,475 AUM's (Ex. A-3, p. 00748). During that period, Riddle Ranches voluntarily applied for, and BLM approved, grazing use of less than the grazing preference of 27,199 AUM's. Riddle Ranches applied for nonuse of part of its preference not because the public range could not support use at the grazing preference, but because of economic considerations and the nature of its cattle operation (Tr. 515).

With respect to season of use, the BMFP concludes:

Adjust livestock season of use and/or implement grazing systems on spring and summer ranges to meet minimum growth needs of preferred plant species.

(Ex. A-3, p. 00739). The reason for this conclusion is:

Forage production is reduced and vigor of preferred species is adversely affected by excessive livestock use early in the growing season. Continued early livestock use on preferred species can lead to a decline in range condition. Livestock turn-ons dates from April 15-30 are recommended on lower elevational ranges (shadscale type) and April 20-May 15 on mid-elevational big and low sagebrush types. On allotments where deferred or rest rotation grazing systems are implemented the above dates may be adjusted.

(Ex. A-3, p. 00739).

From 1963 to 1968, the Boise District Advisory Board conducted a study of the range within the Riddle allotment and recommended the following dates as the proper seasons of use for that range: May 11 to June 20 and September 15 to October 30 (Tr. 109-111). In May 1982, the Bruneau-Kuna Grazing Environmental Impact Statement Draft (DEIS) was completed (Ex. A-3, pp. 00932-01091). The DEIS listed as the proposed and existing season-of-use for the Riddle allotment March 16 through February 28, and noted that "[a]s allotment plan are implemented, season-of-use dates may be adjusted, but normally would remain within the time period specified." (Ex. Aa-3, pp. 00954, 00957). The FEIS also identifies the existing season-of-use for the Riddle allotment as March 16 through February 28 and contemplates that any adjustments in the season-of-use will be made in an allotment management plan (Ex. A-3, pp. 00847, 00849-00850).

In the Final Decision, BLM adjusted Riddle Ranches' season of use by delaying the turnout date onto the spring range from March 16 to April 16, beginning in year 1, and from April 16 to May 1, beginning in year 3. These adjustments were based upon

monitoring studies and range readiness observations, the results of which led BLM to conclude that turning out cattle in the early spring (March 16) was harmful to range condition and that delaying the turnout date would be beneficial to the range (Ex. A-7, p. 14; Tr. 569-570, 686, 795-800, 818, 1065-1066, 1313-1315).

Discussion

I.

The Grazing Capacity Determination

implementation of the Taylor Grazing Act of June 24, 1934 (the Act), as amended, 43 U.S.C. §§ 315, 315a-315r (1982), is committed to the discretion of the Secretary of the Interior. Ruskin Lines, Jr. v. BLM, 76 IBLA 170 (1983); Claridge v. BLM, 71 IBLA 46 (1983). Section 2 of the Act charges the Secretary with respect to grazing districts on public lands to "make such rules and regulations' and to "do any and all things necessary * * * to insure the objectives of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range * * *." 43 U.S.C. § 315a (1982). The Federal Land Policy and Management Act of 1976, amending the Taylor Grazing Act, reiterates the Federal commitment to the protection and improvement of the Federal rangelands. See 43 U.S.C. §§ 1751-1753 (1982). The BLM district manager is responsible for making decreases in numbers of cattle allowed on existing grazing leases when necessary. 43 C.F.R. 4110.3-2(b) (1983). A determination by District Manager of the grazing capacity available for livestock use will not be overturned by this Board in the absence of a clear showing of error. Claridge v. BLM, supra at 50; 43 C.F.R. 4.478(b). Where, as here, the parties question the accuracy of a range survey, it is not enough for a range user to show that the grazing capacity could be in error; he must show that it is erroneous. Briggs v. BLM, 75 IBLA 301, 302 (1983); Allen v. BLM, 65 IBLA 196, 200 (1982); Rachel Ballow, 28 IBLA 264 (1976).

Clyde L. Dorius et al. v. Bureau of Land Management, 83 IBLA 29, 37 (1984).

The Department has recognized certain elements that must be shown to overturn the results of a range survey:

There is inherent in * * * [the Bureau's range studies] an element of human judgment which cannot be eliminated by the most meticulous observance of

established procedure for measuring range capacity. However, * *
 * [t]he fact that there is error in the Bureau's findings can be
established only by showing that the Bureau's range survey
methods are incapable of yielding accurate information, that
there was material departure from prescribed procedures, or that
a demonstrably more accurate survey has disclosed a different
range capacity. David Abel, 2 IBLA 87, 96, 78 I.D. 86, 93
 (1971); O.J. Cooper, A-30974 (Apr. 29, 1969).

Id. (quoting David Abel, 2 IBLA 87, 96, 78 I.D. 86, 93 (1971)).

In this case, appellant has shown that BLM's range survey methods are incapable of yielding accurate information, and therefore that BLM's determination to reduce Riddle Ranches' active use to the carrying capacity established by the 1979-81 Inventory must be set aside. According to BLM policy and other evidence presented at the hearing, the 1979-81 Inventory is a one-point-in-time production inventory similar to SVIM which cannot be used to reliably estimate the carrying capacity of the range (Ex. A-3, pp. 00715, 00749; Tr. 73, 447, 451, 946, 1543).

BLM argues that the 1979-81 Inventory in conjunction with subsequent monitoring studies conducted by BLM may be used to establish carrying capacity. Certainly, the 1979-81 Inventory provides baseline inventory data which may be used as a starting point for a monitoring program (Ex. A-2, p. 00337). For instance, BLM concluded from an examination of the 1979-81 Inventory data that most of the Riddle allotment was in "poor" or "fair" ecological condition (Ex. A-3, p. 01065; Ex. A-7, pp. 4, 14). However, the monitoring performed by BLM, either by itself or together with the 1979-81 Inventory data, cannot be used to reliably establish carrying capacity (Tr. 205, 782-783, 1543).

BLM's monitoring program on the allotment consists of trend and range readiness studies. In addition to the 1979-81 Inventory, BLM relied only upon its trend studies, and not the range readiness studies, in determining the carrying capacity of the allotment (Tr. 134-135, 784). The trend studies consist of photo plot comparisons as well as several years of studies within selected key areas measuring the frequency of grasses and shrubs, the percentage of ground cover, and the density of shrubs (Ex. A-7, p. 10; Tr. 174-175, 184-186). After examining the trend data, BLM concluded that the trend is static for most of the areas in "poor" or "fair" ecological condition (Ex. A-7, pp. 11-14, 16).

Based upon its conclusions, BLM believes that a reduction in Riddle Ranches' active grazing use is necessary to satisfy the objectives of the BMFP, which, for the entire resource area called for improving 333,532 acres of land in "poor" condition to "fair" condition and 343,522 acres of land in "fair" condition to "good" condition within 20 years

(Ex. A-3, p. 00728; Tr 166). 1/ However, it is not possible to quantify the purported necessary reduction or the correct carrying capacity by reference to the ecological condition of the land and the trend data (Tr. 416-420, 476).

In sum, neither the 1979-81 Inventory nor the trend studies nor a combination of the two provides a reliable basis for estimating the carrying capacity of the range (Tr. 205, 416-420, 447, 451, 476, 782-782, 1543) and thus the estimation derived therefrom is clearly erroneous. At best, the trend studies indicate the need for some reduction in grazing use, but they do not permit reliable quantification of the reduction. Therefore, the reduction or Riddle Ranches' active grazing preference to the carrying capacity estimated by the 1979-81 Inventory must be set aside.

This conclusion is buttressed by the carrying capacity estimates made by Riddle Ranches' expert consultants from Western Range Service. Derek Bailey, who holds a doctorate degree from the Department of Range Science, Colorado State University, Michael Borman, who holds a doctor of philosophy degree in range ecology from Oregon State University, and Al Steninger, who holds a masters degree from the College of Forestry and Range Management, Colorado State University, and is the President of Western Range Service (Exs. A-9, A-20, A-28). 2/ These experts testified that the carrying capacity of the allotment exceeds Riddle Ranches' grazing preference of 27,199 AUM's (Tr. 365, 386, 464-465, 486, 1172-1173; Ex. A-30, p. 4). These estimates are based upon actual use and utilization studies, which Mr. Taylor of BLM acknowledged to be the usual method for determining carrying capacity (Tr. 1107-1108).

BLM challenged the accuracy of the estimates by contending that the actual use figures for the spring range in 1992, taken from the actual use reports, are overstated. The basis for this challenge is two counts of cattle in the summer range performed by BLM employees from a helicopter on July 13 and July 17, 1992 (1325, 1331-1332). The number of cattle counted, 726 head on July 13, and 1,085 head on July 17, is substantially less than the number of cattle reported as actually using the summer range (Exs. R-23, R-24, R-25; Tr. 1338, 1350).

Initially, it is worth noting that a count of came in the summer range is of limited value in challenging the accuracy of actual use figures for the spring range. More importantly, the

1/ Riddle Ranches disputes BLM's contention that the land use objectives regarding ecological condition of the land were not being met.

2/ Additional experts testified for Riddle Ranches on other subject matters: Lamar Smith, an associate professor of range management and leader of the Range Management Program for the University of Arizona, and Carl Goebel, who holds a doctorate degree from Utah State University in range management and is a professor in the Department of Natural Resources Sciences, Washington State University (Exs. A-19, A-38).

actuary use figures are based cattle counts conducted on the ground which are much more reliable than the helicopter counts conducted by BLM.

While the BLM employees who conducted the helicopter counts expressed confidence in their accuracy (Tr. 1355, 1368), the method by which the counts were conducted was not likely to result in reliable totals. Mr. Steninger, who is far more experienced than the BLM employees in conducting counts of cattle from the air, testified that a pilot should fly in a grid pattern in order to achieve an accurate cattle count from the air (Tr. 1529). The BLM employees did not fly in a grid pattern, but merely traversed portions of the allotment in north-south flight lines, with brief detours to look for cattle along riparian areas and reservoirs (Tr. 1333-1334, 1338). While cattle may be expected to congregate around riparian areas and reservoirs. Mr. Jackson testified that Riddle Ranches had hauled water into summer pastures 2 and 3 for better distribution of the cattle (Tr. 1502-1503). Moreover, Mr. Steninger implied that the amount of time spent by the BLM employees traversing the spring range of the allotment, one hour on July 13 and one and one-half hours on July 17 (Tr. 1363), is inadequate to achieve a reliable count of cattle over such a large area (90,000 acres) (Tr. 1530-1532).

In contrast, the actual use reports for the spring and summer range are based primarily upon counts of cattle performed by members of the Jackson family standing at gates through which the cattle passed (Tr. 1475-1483). This is a far more reliable method of counting cattle, Mr. Jackson testified to the accuracy of these reports (1479, 1484-1486, 1496), and there is little reason to doubt his credibility or the accuracy of the actual use reports, especially in light of the stability of the Riddle Ranches operation in terms of the number of cattle and its methods of grazing over the last decade (Tr. 1511, 1536).

Mr. Taylor and Mike Pellant, a BLM Range Conservationist, who are more familiar with the allotment than Riddle Ranches' experts, did identify several deficiencies in the utilization studies which call into question the accuracy of the resulting estimates of carrying capacity. Those deficiencies include a failure to conduct utilization pattern mapping prior to performing the utilization studies to adequately account for variability within the large allotment, an insufficient number of study sites to adequately represent the variability, an insufficient number of observations per key site of each key species, a failure to use transects to determine utilization in the spring range in 1990, improper timing of the studies, and the improbable and disparate nature of the results of the two years of studies (Tr. 574, 577-582, 586-588, 756-757, 763-764, 768-769, 1060-1064, 1108-1109; Ex. A-11, p. 02012).

In response, Riddle Ranches contends that its experts did conduct utilization mapping, but only in the spring use area and only after conducting the utilization studies. From this mapping, Riddle Ranches gleaned evidence that the utilization data for each of the key sites is representative of utilization within the pasture in which the key site was located (Tr. 1133-1134, 1159-1160, 1231). Riddle Ranches also contended that it made sufficient

observations per key site based, in part, upon a BLM Manual Supplement for Idaho, issued in 1982, which calls for a minimum of 10 observations per key site (Ex. A-1, p. 00164).

Nevertheless, the utilization studies are somewhat suspect because Riddle Ranches' experts did not adequately take into account the variability of the range in terms of forage production, vegetation, soils, and utilization. They testified that they felt that the allotment was fairly homogeneous in terms of vegetation and forage production (Tr. 479-480, 537), when, in actuality, it varied considerably in forage production and vegetation (Tr. 575, 678, 790, 1423-1425). The evidence also shows that Riddle Ranches' experts did not adequately account for the variability in utilization nor for the amount of range which was stony to the point of being unsuitable for grazing or, at least, much less productive than the key sites (Tr. 578, 580, 587, 674-676, 678, 687-688, 717-718, 1399, 1407, 1420). They made observations only from points along roads (Tr. 1375, 1398). This evidence supports Mr. Taylor's contention that more key sites are required for the utilization studies.

The number of observations per key site of each key species is less problematic. At least 25 observations per key site of each key species were made and at least 10 observations at non-Key sites (Tr. 1135, 1157). The BLM Manual Supplement identifying 10 observations per key species per key site notes that "highly variable vegetation soil, and topography require a larger number of observations than normal conditions (Ex. A-1, p. 00164). A 1984 publication of the BLM Manual reiterates this rule and states that a minimum of 25 observations per site of each key species is recommended (Ex. A-2. p. 00380). Mr. Taylor testified that regardless of whether the minimum standard was 10 or 25 observations per site, Riddle Ranches' experts did not make a sufficient number of observations per site of each key species to account for the variability within the allotment (Tr. 768-769). This testimony does raise some doubt as to the accuracy of the utilization studies, but that doubt is tempered by the fact that Mr. Taylor mistakenly believed that only 10 to 24 observations were made per site (Tr. 764).

Mr. Taylor questioned the timing of the studies as well. However, some of the resulting data was not used by Riddle Ranches' experts (Tr. 759-760). Nevertheless, some of the used data is derived from studies conducted several months after cattle ceased grazing the studied areas and after the end of the crop year. The use of the spring range in 1990 was not studied until October and November 1990 and the use of the summer range for 1991 was not studied until January 1992 (Tr. 579, 585). Plant growth each year depends, in part, upon the accumulation of precipitation from September of the previous year through June of that year (see Tr. 669-670, 1162-1163). This period of time is called the crop year and utilization data for a particular year is routinely adjusted to account for the amount of precipitation in the crop year (crop year index) (Tr. 1162-1163). Utilization studies conducted after the end of the crop year, such as the ones mentioned above, are suspect because the plants benefit from precipitation accumulating after the end of the crop year and regrowth obscures prior use (see Tr. 585, 757).

Finally, the reliability of the results of 2 year of utilization studies is questionable due to the disparate and improbable nature of the results. The 1991 results showed a carrying capacity nearly twice as large as that shown by the 1990 results (Tr. 586-587). This disparity cannot be explained by the difference in the crop year index for these years (Tr. 587).

Also, both Mr. Pellant and Mr. Taylor testified, based upon their considerable experience with similar range in the area, that the forage production figures taken from the utilization studies were too high to be reliable or realistic (Tr. 581-582, 588, 1060-1061). According to the utilization studies, the estimated average forage production of the entire allotment was approximately 4.7 acres per AUM, with some pastures purportedly averaging close to 2 acres per AUM (Tr. 366-373, 1189-1190). Both Mr. Pellant and Mr. Taylor elaborated that only the best seedings in the area approach a forage production rate of 2 acres per AUM (Tr. 587-588, 1060). Mr. Taylor further noted that the seedings eventually stabilize at 3 to 4 acres per AUM on a sustained basis (Tr. 1060). Riddle Ranches ridiculed these general observations as unsupported by systemized study, but I find them to be highly supportive of the fact that the utilization studies overstate the carrying capacity of the allotment.

In sum, I find that the utilization studies overstate the carrying capacity or the allotment but are, nevertheless, of sufficient reliability to be supportive of the finding that the 1979-81 Inventory carrying capacity, taking into account the trend data is clearly erroneous.

II.

The Season of Use Determination

A determination of the season of use of a portion of the Federal range is within the discretion of the local BLM officials and will not be disturbed unless it is arbitrary or capricious or based upon insufficient or unreliable evidence. George C. West, A-28862 (Aug. 10, 1962); Mrs. Mildred Carnahan, 10 IBLA 150 (1973). In general, where, as here, a decision determining grazing privileges has been reached and issued in the exercise of administrative discretion, the appellant seeking relief therefrom bears the burden of showing by substantial evidence that the decision is arbitrary, capricious, or clearly erroneous as a matter of law. A decision may be regarded as arbitrary and capricious only if it is not supportable on any rational basis or if it does not substantially comply with the grazing regulations. See Joe Saval Co. v. Bureau of Land Management, 119 IBLA 202, 208 (1991); Fasselin v. Bureau of Land Management, 102 IBLA 9, 14 (1988); Webster v. Bureau of Land Management, 97 IBLA 1, 3-4 (1987).

Riddle Ranches contends that the determination to defer its turnout date on the spring range from March 16 to May 1 should be set aside for several reasons. First, it argues that BLM "offered little if any evidence and certainly no rangeland studies to justify this part of

the decision." (Appellant's Amended Opening Brief, p.77). The evidence does not support this contention.

As previously mentioned, a rangeland study was conducted from 1963 to 1968 by the Boise District Advisory Board which recommended the following dates as the proper seasons of use for the Riddle allotment: May 11 to June 20 and September 15 to October 30 (Tr. 109-111). Riddle Ranches dismisses this study based upon the fact that the subsequent FEIS adopted March 16 as the spring turnout date. But Mr. Taylor testified that it was not one of the purposes of the FEIS to determine the proper season of use for each allotment, but that site specific data from the inventories and future monitoring would "set the stage for [determining proper] seasons of use." (Tr. 942-943). The FEIS simply adopted the then current turnout date without an analysis of its appropriateness. Thus, the recommendation of the earlier Advisory Board study is not devalued or overturned by the FEIS.

The controlling document, the BMFP, contemplates adjustments in season of use to meet minimum growth needs of preferred plant species (Ex. A-3, p. 00739). Thus, the RPS states:

Studies and evaluation procedures will be initiated to determine if the MFP and specific allotment objectives are being met * * *. Where specific objectives are not being met, adjustments in season of use, livestock numbers (including removal) or grazing system will be made depending on the indicated need.

BLM personnel made observations and performed studies which indicated a need for a delay in the spring turnout date. On April 20, 1982, March 5, 1983, and May 8, 1984, Mr. Pellant flew by helicopter into the Jarvis Pasture area of pasture 15 of the spring range to look at utilization levels and range readiness, including the condition of the soil and the growth stage of the preferred species (Tr. 561, 563, 567, 569). The preferred or key species of concern were primarily bluebunch wheatgrass and Idaho fescue (Tr. 606). In 1982, Mr. Pellant observed that conditions were generally dry, that some preferred species had been plucked from the ground, and that the preferred species were 4 or 5 inches tall, which, in his opinion, was not sufficient growth to meet the plants' minimum growth needs. (Tr. 562, 606-607). In 1983, the soil was muddy, with evidence of hoofprints up to 3 or 4 inches deep, Preferred species had been plucked from the ground, then had been sheared by trampling, and were 3 to 5 inches tall, which Mr. Pellant believed was insufficient growth to meet their minimum growth needs (Tr. 563-567, 607). In 1984, Mr. Pellant once again observed hoofprints in moist soil up to 2 inches deep and that the growth of Idaho fescue was insufficient to meet its minimum growth needs (Tr. 568-569, 609). Based upon these observations, as well as subsequent observations, Mr. Pellant concluded that cattle were being turned out too early onto the spring range to allow the preferred species to maintain their current populations (Tr. 569-570).

John Asn, a BLM Natural Resource Specialist and a former range conervationist assigned to the Riddle allotment, testified that in April 1988, the soil in the spring range was moist and that Idaho rescue had not started growing yeat (Tr. 611-615). Mr. Ash concluded taht it is too cold in the spring range in March-April for plant growth to occur (Tr. 616). No other similar allotments at the same evlevation have turnout dates as early as March 16 and most of them hav turnout dates of approximately April 15 (Tr. 616). Mr. Ash also participated in range readiness studies conducted in the Jarvis Pasture area on April 4, 1989, the spring of 1990, and April 2, 1991 (Tr. 626-628). Each of these times he observed that the preferred speciefies ahd not started growing and concluded that the readiness date for the spring range was somewhere between April 15 and May 15 (Tr. 627-629, 641).

Paul Seronko, a BLM Environmental Protection Specialist, who was in charge of the soil survey of the Riddle allotment conducted in 1980 and 1981, also testified (Tr. 654-655). He stated that the soils within the spring range of the allotment are generally heavy clay soils (Tr. 660-667). Mr. Seronko explained that when these heavy clay soils thaw out they usually become saturated with moisture from rainfall and snowfall which accumulated from the previous October through March and any precipitation that falls during the thawing (Tr. 663, 666-673). The soils are then highly susceptible to damage from plucking and shearing (Tr. 679-684, 728-730). Also, the preferred species should not be grazed until the soils warm sufficiently and after they first begin to grow (Tr. 713, 729). Because the heavy clay soils in the spring range are mostly frigid, very cool soils which thaw and warm sufficiently later in the year to permit growth of the prefered species, grazing should begin no earlier than April 15 and preferably closer to May 15 (R. 553-663, 673, 686, 690, 730-731).

Jack Larocco, a BLM Wildlife Biologist and former range conservationist and monitoring coordinator in the Boise District, testified that photo plots were taken in 1983, 1987, and 1990, in each of the 10 keys sites as part of the monitoring program for the Riddle allotment (Tr. 825-826, 872-874). Eight out of the ten sets of photo plots showed an increase in sagebrush, which competes with the preferred species and/or a decrease in the preferred species (Tr. 874-885).

Roger Roseneter, a BLM Botanist who participated in the 1979-81 Inventory of the Riddle allotment testified that Idaho rescue in pasture 15 of the spring range begins growing around April 15 and is ready to graze around May 20 (Tr. 786-787, 795, 800, 811). He later indicated that the preferred species generally begin growing in March on the Riddle allotment and that they are not ready to graze until they begin flowering, usually after May 15 ((Tr. 1439-1440). He was not aware of any other range areas of similar elevation in the Boise District where grazing commenced as early as March 15 (Tr. 811). Like Mr. Seronko, Mr. Rosentreter stated that the preferred species were susceptible to damage from plucking and shearing in the wet spring soils and that they should not be grazed during their early growth phase (Tr. 795-807). He also mentioned

the problem of plant stems freezing when they are exposed by the grazing action action cattle (Tr. 805). He identified the early growth phase as mid-April through late May and opined that May 1 was an appropriate turnout date, given the expected gradual rate of turnout of cattle on to the spring range (Tr. 795, 800, 803-804, 821). Mr. Rosentreter concluded that the delay in the spring turnout date would help improve the condition of the spring range (Tr 818).

Mr. Taylor's testimony regarding the appropriate season of use was similar to that of both Mr. Rosentreter and Mr. Seronko. He reiterated the problems associated with the early turnout date of March 16, including the plucking, shearing, and premature grazing of preferred species and the compaction and destruction of the soil structure, and concluded that cattle should be turned out in to the spring range no earlier than May 1 (Tr. 1065, 1083-1097). He further concluded that deferring the spring turnout date would improve the vigor and density of the preferred species (Tr. 313-315).

This evidence is more than sufficient to sustain a finding that the determination to defer the turnout date for the spring range was not arbitrary or capricious and based upon reliable and substantial information.

Second, Riddle Ranches contends that the minimum growth needs of the preferred species are being met because the utilization studies showed slight (0-20 percent) or light (21-40 percent) utilization levels in the spring range. It argues that these utilization levels are significantly below the level determined to be proper use in the BMFP and the Final Decision. The Final Decision provides at page 4:

Utilization shall be maintained at or below the 50% level or current year's growth to meet the physiological requirements to key forage species.

As found previously, the results of the utilization study are suspect, undermining the premise of Riddle Ranches argument. Moreover, the Final Decision cites as the basis for the change in the season of use the results of the range readiness observations and the failure to satisfy the "overriding land use management objective to improve poor and fair condition ranges to fair and good[,] respectively." Final Decision, p. 3. These are legitimate bases for delaying the spring turnout date, regardless of whether the 50 percent or less utilization goal is being met.

Third, Riddle Ranches contends that there is no legitimate justification for the delay in the spring turnout date because BLM is incorrect in its conclusion that the ecological condition objectives of the BMFP are not being met. BLM and Riddle Ranches are in general agreement that the trend for most areas is static (Tr. 290-296, 380). One of the objectives of the BMFP is to maintain the ecological status of areas in good or excellent condition (Ex. A-3, p. 00728). Riddle Ranches argues, based upon the 1979-81 Inventory data that almost all of the spring range is in good or excellent condition and therefore that the generally static trend is acceptable under the BMFP.

However, as previously noted, another BMFP objective is to improve the condition of much of the range in poor and fair condition to fair and good condition respectively. BLM interprets the 1979-81 Inventory data differently than Riddle Ranches, concluding that much of the spring range is in fair or poor condition and therefore that the generally static trend is unacceptable under the BMFP (Tr. 166; Ex. A-7, pp. 14-17).

This disagreement need not be resolved because BLM's interpretation of the 1979-81 Inventory data was clearly employed in determining the ecological condition of the range as set forth in the BMFP (Tr. 166, 203-205, 1308-1312; Ex. A-3, p. 01065; Ex. A-7, pp. 4, 14), and the objectives of the BMFP are necessarily tied to this interpretation of the data. This is not the appropriate forum for revisiting the determinations made in the BMFP. Therefore, I conclude that BLM's interpretation of the data must be applied and that the land use objective to improve the range in poor and fair condition is not being met.

Fourth, Riddle Ranches contends, based upon the utilization studies, that minimum growth needs of the preferred species are being met because the actual use has been insignificant in comparison to the potential livestock carrying capacity or the spring range. This contention is merely a reformulation or the second contention above that the low utilization levels shown by the questionable utilization studies necessarily require a finding that the minimum growth needs of the preferred species are being satisfied. This contention is once again rejected based upon the reasoning set forth above.

Fifth, Riddle Ranches' experts disagree with BLM's conclusions that early spring use of the range is harmful and that the deferral of the spring turnout date will be beneficial to the range. Based upon the opinions of its experts, Riddle Ranches contends that the present early spring use of the range is not harmful, and that a deferral of the turnout date will cause cattle distribution problems and potential damaging concentrations of cattle because (1) it will be forced to accelerate the turnout rate due to dwindling forage on its base property, (2) the drying up of water sources on the spring range will concentrate cattle around the remaining water sources, and (3) the proliferation of heel flies which occurs in May/June will prematurely drive the cattle into summer pastures before uniform utilization can be achieved.

Riddle Ranches' claim that a deferral of the spring turnout date would force it to accelerate the turnout rate due to dwindling forage on its base property is speculative and contrary to the testimony of Mr. Steninger. He testified that accelerating the turnout rate of the cattle would be improper range and cattle management and that Riddle Ranches would continue to gradually turnout its cattle, leaving some cattle on the base property until the middle of June (Tr. 540-541). He further stated that hay production on Riddle Ranches' base property would be adversely affected if cattle remained on the base property after May 1 (Tr. 524-525). He concluded that if the spring turnout date is set at May 1, the base property would not be able to sustain the present herd size of 4,000 head and the herd would have to be reduced by 1,000 head (Tr. 509-510). Mr. Steninger did not analyze how this herd reduction would impact the economic viability of Riddle Ranches' cattle.

operation, but speculated that "it may survive." [i]t would still be a siz[able] enough * * * operation to be economically viable." and "it would make it certainly more difficult economically." (Tr. 511).

The economic effect of a change in grazing privileges on a particular range user is certainly one factor to be considered in determining if a decision is unreasonable. Charles Maher et al., 79 I.D. 109, 115 (1972). But the decision need not be overturned, as in this case, in the absence of a showing that the decision seriously impairs its livestock operation, renders its private property valueless, or seriously endangers the possibility or its continuation in the livestock business. See National Livestock Company and Zack Cox, IGD 55 (1938); Ball Bros. Sheen Company et al., 2 IBLA 166, 170 (1971).

Nor should the Final Decision be overturned because some, but not all, of the many water sources on the spring range are likely to dry up between March 16 and May 1, especially during dry years (Tr. 101-104, 504-506). Riddle Ranches' own expert, Mr. Steninger, admitted that the deferral of the spring turnout date would not create a grazing problem around the remaining water sources (Tr. 507).

The concern over the proliferation of heel flies which occurs in May/June is similarly of insufficient consequence to mandate overturning the Final Decision. According to Mr. Steninger heel flies become a "bother" to cattle in May/June and help distribute the cattle from the lower to the higher elevations of spring pasture 15 (Tr. 493). This testimony does not amount to substantial evidence that the Final Decision is arbitrary, capricious, or clearly erroneous.

To the extent, if any, that cattle distribution problems arise, Riddle Ranches' employees can continue their practice of riding the spring range to keep the herd scattered out and well distributed (Ex. A-7, p. 5).

The many disagreements between BLM's experts and Riddle Ranches' experts have been considered but not all are individually addressed in this decision. Only a few of them are addressed because mere professional disagreement by an appellant's expert witnesses with the findings and conclusions reached by BLM decision makers is insufficient to overturn a BLM decision. See Sierra Club et al., 104 IBLA 76, 84 (1988). Riddle Ranches must show that BLM's adjustment of the spring turnout date was arbitrary, capricious, or clearly erroneous to justify overturning the adjustment in its season of use.

Riddle Ranches expressed concern with the fact that BLM did not apply certain range readiness criteria for low elevation sites in determining the range readiness of the Riddle allotment. Mr. Taylor explained that these criteria are not applicable to the Riddle allotment because the Riddle allotment is not a "low elevation" site (Tr. 1102, 1104). Idaho fescue, one of the preferred species in the Riddle allotment, is not addressed in the "low elevation" range readiness criteria (Tr. 1104).

Based upon their interpretation of the results of the 1979-81 Inventory and the utilization and trend studies, Riddle Ranches' experts disagreed with BLM's experts regarding the need for deferral of the spring turnout date, stating that compaction of the soil and clipping, shearing, and plucking of the preferred species are not problematic in the spring (Tr. 500-503, 1214-1217, 1232-1234, 1238). But as explained above, their interpretation of the results of the 1979-81 Inventory are inconsistent with the BMFP and the results of the utilization studies are of questionable worth.

Mr. Goebel's disagreement with BLM's assessment of the damage to the preferred species being caused by early spring grazing is also based, in part, upon the fact that he would expect the preferred species to be replaced by aggressive annuals (cheatgrass), and not just sagebrush, if the preferred species were being damaged (Tr. 1234, 1237, 1243). He also testified that Idaho fescue and bluebunch wheatgrass start growing early in comparison to other perennial vegetation (Tr. 1245).

BLM's expert, Mr. Rosentreter effectively countered Mr. Goebel's testimony, noting that the absence of cheatgrass in the Riddle allotment is explained by the coldness of the climate, heaviness of the soils, and the large amount of sagebrush, which inhibits the growth of cheatgrass (Tr. 1444). He further stated that Idaho fescue and bluebunch wheatgrass are late-maturing grasses and speculated that Mr. Goebel's opinions were influenced by his experiences in the warmer climate of the Snake River valley (Tr. 1439, 1442-1443).

In sum, the testimony of Riddle Ranches experts in disagreement with the testimony of BLM's experts does not amount to a showing that the Final Decision was arbitrary, capricious, or clearly erroneous.

Sixth, Riddle Ranches makes much of the fact that BLM suggested to Mr. Jackson, as an alternative to deferring the spring turnout date, the possibility of resting the spring range every other year or even, Third year by trucking or trailing his cattle to a nearby allotment of similar elevation (Tr. 644-646: Ex. A-21). Riddle Ranches asserts that the spring turnout date for this allotment is in March and that BLM's suggestion is evidence of the arbitrariness of the determination to delay the spring turnout date in the Riddle allotment. However, Riddle Ranches never established the spring turnout date of the other allotment and presented no other evidence as to the similarities or dissimilarities between the two allotments. Without such evidence, BLM's suggestion cannot be viewed as substantial evidence of the arbitrariness of the determination.

Seventh, Riddle Ranches contends that BLM failed to meet its duty to consult, coordinate, and cooperate with Riddle Ranches before issuing the Final Decision, but the facts do not support this contention. A draft copy of the allotment evaluation, without recommendations for action, was provided to Mr. Jackson in August of 1990 (Tr. 622). Prior to issuing the Final Decision, BLM discussed with Mr. Jackson the evaluation and its intent to reduce Riddle Ranches' active preference and change its season of use (Tr. 517,

557, 620 650-651). Mr. Jackson and BLM could not agree on the appropriate grazing management for the allotment (Tr. 650-651). Thus, BLM complied with any duty it had to consult, coordinate, and cooperate with Riddle Ranches during the decisionmaking process.

Finally, Riddle Ranches contends that BLM did not conform to the BMFP (required by 43 CFR 4100.0-8, that BLM failed to satisfy several alleged preconditions for changing the season of use: (1) development of an allotment management plan (AMP) for the Riddle allotment, (2) development of livestock management facilities to implement the AMP and/or grazing systems designed to reach or maintain the objectives and decisions of the BMFP and (3) brush control treatment and/or reseeding of approximately 21,700 acres within the Riddle allotment. 43 CFR 4100 0-8 provides in pertinent part:

The authorized officer shall manage livestock grazing on public lands * * * in accordance with applicable land use plans. * * * Livestock grazing activities and management actions approved by the authorized officer shall be in conformance the land use plan defined 43 CFR 1601 0-5(b).

"Conformance" means that source management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment." 43 CFR 1601.05(b).

After a thorough review of the BMFP, I simply cannot agree that these alleged preconditions are, in fact, preconditions for changing the season of use. While the BMFP contemplates that the actions described in these alleged preconditions shall occur at some time in the future. Riddle Ranches contention amounts to an argument that BLM may take no livestock management action regarding the allotments to be intensively managed until the alleged preconditions are satisfied. This is not a fair reading of the BMFP.

The fact that allotments are prioritized for intensive management in the BMFP is an acknowledgment that intensive management shall occur only to the extent to which BLM's limited resources allow for it. There is no intent that all management action cease until the resources are available to institute intensive management. In this case, intensive management has yet to begin and BLM, consistent with the BMFP, may take action, including changing the season of use, in pursuit of satisfying the BMFP objectives without satisfying the purported preconditions listed by Riddle Ranches.

Conclusion

Without further belaboring this decision with additional references to contentions regarding errors of fact and law, except to the extent they have been expressly or impliedly addressed in this decision, they are rejected on the ground they are, in whole or in part, contrary to the facts and law or are immaterial. Based upon the foregoing, the Final Decision is affirmed, except that portion of the decision which reduces Riddle Ranches active grazing

preference below the 5-year average licensed active use for the 1976-1980 period (23,475 AUM's), as adjusted to account for the Federal/State land exchange of 1989 and the unavailable AUM's of pasture 16. That portion of the Final Decision is hereby set aside.

John K. Rampton, Jr.
District Chief
Administrative Law Judge

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138 IBLA 105

ORDER

RIDDLE RANCHES, INC.	:	1 D-01-91-03
	:	
Appellant	:	Appeal from the Area Manager's
	:	Notice of Proposed Decision
	:	dated September 20, 1990,
	:	Bruneau Area Manager Boise
	:	District Idaho
V.	:	
	:	
BUREAU OF LAND MANAGEMENT,	:	
Respondent	:	
	:	

Order Clarifying and Amending Decision

A decision was entered in the above-captioned matter on September 8, 1993. On September 21, 1993, appellant filed a Motion to Clarify Decision. On September 29, 1993, respondent filed an Objection to Appellant's Motion to Clarify Decision. On September 30, 1993, appellant filed a Reply to Respondent's Objection to Appellant's Motion to Clarify Decision. Having reviewed the motion, objection, and reply, the last two sentences of the September 8, 1993 Decision are hereby stricken and replaced by the following: 1/

Based upon the foregoing, the Final Decision is affirmed, except that portion of the decision which reduces Riddle Ranches active grazing preference below 23,088 AUM's) that portion of the Final Decision is hereby set aside.

The 23,088 AUM's figure is the initial livestock use level established by the Final Decision. This figure is not based upon the 1979-81 inventory figure.

1/ The modification to the Decision is in lieu of that suggested in appellant's motion.

but rather, properly based upon and consistent with the BMFP determination that in initial livestock use levels will be established at the 5-year average licensed active use for the 1976-1980 period (23,475 AUM's for the Riddle allotment). BLM properly adjusted the 5-year average licensed use figure to account for the Federal\State land exchange of 1989, the unavailable AUM's of pasture 16, AUM's allocated to wildlife, and Indian horse trespasses (see Final Decision, pp. 1-3).

Because this Order clarifies and amends the September 8, 1993 Decision, the period for appeal to the Interior Board of Land Appeals shall begin to run anew from the date of service of this Order, as more fully set forth in 43 CFR Part 4 and the information pertaining to appeals procedures accompanying the September 8, 1993 Decision.

This clarification and amendment to the Decision is based upon the following: the Final Decision acknowledges that the Bruneau Management Framework Plan of 1983 BMFP recommends setting the initial forage allocation for livestock at 23,475 AUM's (Final Decision, p.1). In fact, the BMFP determined that the initial livestock use levels will be established at a five-year licensed active use levels from the years 1976-1980, i.e., 23,475 AUM's Riddle allotment, or by mutual agreement (Ex. A-3, pp. 00747-00748).

The Final Decision further acknowledges that the Federal/State land exchange of 1989 and the inaccessibility of pasture 16 have brought a reduction in the AUM's available for grazing, resulting "In the need for adjustment in the total forage allocation and condition figures as described in the [BMFP]." (Final Decision, p. 2). Those reductions are identified as 72 AUM's for the unavailable forage in pasture 16 and 162 AUM's for the net loss of public land resulting from the Federal/State land exchange (Final Decision, p.2).

The Final Decision also identifies a forage allocation adjustment (reduction) of 232 AUM's to account for use of the allotment by wildlife (Final Decision, p. 2). Finally, a forage allocation adjustment (increase) of 80 AUM's is made to account for the use of the allotment by Indian horses in trespass (Final Decision, p. 3). These forage allocation adjustments to the BMFP figure of 23,475 AUM's) results in a figure of 23,088 AUM's ^{2/} to be initially allocated to livestock use under the Final Decision.

Thus, the 23,088 AUM's figure is not based upon the unreliable 1979-81 inventory figure, but the controlling BMFP figure, adjusted for the unavailability of certain lands and the resource needs of wildlife as identified in the BMFP as such, the initial livestock use level in the Final Decision is consistent with the BMFP and should be upheld.

^{2/} The adjustments actually result in a figure of 23,089 AUM's) not 23,088 AUM's as stated in the Final Decision, but BLM's mathematical error is insignificant.

Furthermore, upholding BLM's determination of the initial livestock use level is proper, and does not constitute the making of a grazing decision by this office.

John R. Rampton, Jr
District Chief
Administrative Law Judge

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